

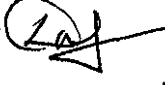
# MEMORANDUM


*Engineering Division*

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TD

**To:** Mike McNeely, City Engineer

**Through:** Darryl Wong, Utility Engineer 

**From:** Marilyn Nickel, Associate Civil Engineer 

**Subject:** Spring Valley Heights Request for Permanent Water Supply

**Date:** September 26, 2003

**Background:** The Spring Valley Heights Mutual Water Company operates a drinking water well as the sole source of water supply for the Spring Valley Heights (SVH) subdivision. The well supply has diminished in capacity resulting in inadequate water supply to meet the health and safety needs of the subdivision. SVH has therefore requested water supply from the City of Milpitas. Key milestones and information on the SVH water supply system which led to this request are highlighted in Attachment 1.

**Discussion:** Several actions are required to implement a SVH permanent connection to the City of Milpitas water system. These include 1) satisfaction of the City's Urban Growth Boundary Ordinance requirements, 2) approval from San Francisco Public Utility Commission (SFPUC), and 3) approval from the Local Agency Formation Commission (LAFCO).

- 1) **Urban Growth Boundary Ordinance.** At the November 3, 1998 General Election, the electorate enacted Ordinance No. 38-742 ("the Urban Growth Boundary Ordinance"), which established an Urban Growth Boundary outside of which City services is restricted. Since SVH subdivision is located outside the Urban Growth Boundary, city water service is subject to ordinance requirements. Under the ordinance, the following four criteria must be met before Council may approve a permanent water supply for SVH:
- An urgent public health or safety concern exists
  - An independent certified professional engineer determines that City supply is the only economically justifiable solution to the health and safety concern
  - The subdivision map for the sites in question had been recorded on or before November 3, 1998
  - The Applicant pays for the cost of service

These four criteria have been addressed as follows:

- The State Department of Health Services has determined that inadequate water supply exists, has instructed SVH to find additional supply, and supports connection to the Milpitas municipal supply. See attachment # 2.
- An independent licensed professional engineer (Todd Engineers) has reviewed the water supply situation and found that connection to water system the City is the only

economically justifiable solution to the health and safety concern. The engineer's report may be found as attachment # 3.

- The subdivision map was recorded prior to November 3, 1998.
- A SVH and City of Milpitas draft agreement is included in the Council packet specifying that the applicant will pay for the construction and operation of the water line extension.

2) **SFPUC Approval.** The City's supply contract with SFPUC prohibits resale of SFPUC water to for-profit water companies, including Mutual Water companies like that at Spring Valley Heights since such sale would be in technical violation of the Raker Act which governs SFPUC service. One option is the dissolution of the Mutual Water Company and, instead, provide water to the Homeowners Association (HOA). We understand that although SFPUC legal staff has determined that service to the HOA would be allowed, staff is still awaiting an SFPUC confirmation letter.

3) **LAFCO Approval.** LAFCO must approve Milpitas municipal service to any site beyond the city boundary. Since one parcel served by the SVH water system is located outside the City boundary, LAFCO approval for water service is therefore required. Urgent health and safety concern requests for water service may be approved administratively by the LAFCO executive officer and Commission Chair in lieu of a formal hearing before the entire commission. LAFCO requires the following documentation for an administrative consideration:

- demonstration that a health and safety concern exists
- Council resolution requesting LAFCO approval
- water supply agreement terms between City and SVH

**Recommendation:** Staff has reviewed the SVH request for water supply, and has concluded that the Milpitas municipal water supply is adequate to serve the SVH subdivision. Staff also has determined that the four Urban Growth Boundary ordinance criteria have been satisfied as discussed above. Staff therefore recommends that Council adopt a resolution approving a permanent SVH connection to the City's water supply contingent upon agreement by SFPUC and requesting an administrative approval by LAFCO for the water supply.

**Attachments:**

Attachment 1 - Key Chronological Milestones, Spring Valley Heights Water Supply

Attachment 2 – State Department of Health services determination that inadequate water supply exists.

Attachment 3 - Independent licensed engineer determination that the City of Milpitas connection is the only economically justifiable solution.

Cc: City Manager  
City Attorney  
Fire Marshal  
Planning Director  
Utility File 20: Spring Valley Heights

Assistant City Manager  
Fire Chief  
Chief Building Official  
Finance Director

## Attachment 1 - Key Chronological Milestones, Spring Valley Heights Water Supply

- Original system constructed in 1978 and consisted of a well, 120,000-gallon reservoir, fire hydrants, and connections to home fire sprinklers for fire protection. Well was 315 feet deep and produced about 45 gallons per minute (gpm).
- SVH's original well #1 went dry and was replaced by well #2 in 1997 which was set at 320 feet deep and produced about 90 to 100 gpm. When #2 went dry, it was replaced by well #3 set at about 280 feet in 2000. This well produced 130 gpm and serves 16 customers who use about 30,000 gallon every 18 hours.
- September 10, 2002 SVH reported that well #3 was dry and the on-site reservoir was almost empty. The well pump was lowered by 80 feet and their on-site water reservoir slowly began filling. Drilling of new well #4 was in progress but not yet complete.
- September 24, 2002 SVH requests permission to purchase Milpitas City water since diminished well capacity has resulted in inadequate water supply.
- October 1, 2002 Council approved Resolution #7223 authorizing SVH to truck up to 14,000 gallons per day (gpd) water from the Milpitas distribution system to the on-site reservoir to serve the sixteen households until the well capacity is adequately increased, or January 31, 2003 whichever occurs first.
- October 31, 2002 California Department of Health Services informs SVH that water supply shortage represents a "potentially significant public health risk to the water users living in the Spring Valley Heights community". Requires SVH, among other things, to submit information on water supply no later than November 15, 2002 and to refrain from issuing "will serve" letters for water connections to any undeveloped lots owners with the subdivision.
- November 2002 City identifies items and requests SVH to address for water supply conformance to Fire and Building codes, and advises that permits or authorizing occupancy may not be issued until reliability of service and fire protection can be established.
- December 13, 2002 Letter from SVH informing City that construction of new well #4 has not progressed as originally anticipated, and that new well may only provide temporary relief. SVH requests an eventual permanent connection to the Milpitas public water system.
- December 27, 2002 request from SVH for a time extension of emergency water supply from the City of Milpitas. City requests support information to place the request on the City Council agenda of January 21, 2003.
- January 21, 2003 Council approved Resolution #7270 extending the authorization to truck water until a permanent water supply is found or December 31, 2003, whichever occurs first.
- January 24, 2003 State Department of Health Services letter (Attachment #1) finding that SVH cannot reliably and consistently produce sufficient water to meet system demand, and instructing SVH to cease issuing "will-serve" letters, notify customers on quarterly basis of supply emergency, and develop a new water supply.
- February 13, 2003 Milpitas letter to SVH noting steps for permanent connection to Milpitas public water supply, including identification of point of connection, estimate of current and future demand (demand info to be provided to SFPUC), SVH to be responsible for costs, city to plan check and inspect.
- April 2003 Staff initiated discussions with SFPUC

- April 2003 Staff initiated discussions with LAFCO
- July 3, 2003 SVH submitted water demand information.
- July 24, 2003 SVH notified city that well #4 is not suitable for either drinking or irrigation due to both inadequate quantity and quality.
- August 14, 2003 State Department of Health Services letter supporting SVH connection to Milpitas public distribution system
- August 29, 2003 SVH-MWC notified staff that the well was going dry and they were beginning to truck water as previously approved by Council resolution. Up to now, trucking had not been necessary as the pump had been throttled back to a slower speed and had been able to maintain on-site reservoir level.
- August 29, 2003 SVH proposed a permanent connection point at Calaveras/Piedmont.

ATTACHMENT 2  
20. Spring Valley Heights

State of California—Health and Human Services Agency  
Department of Health Services

50.0.2



GRAY DAVIS  
Governor



DIANA M. BONTÁ, R.N., Dr. P.H.  
Director

January 24, 2003

Mr. Bob Scott  
Spring Valley Heights Mutual Water Company  
3545 Vista Norte Court  
Milpitas, CA 95035

RECEIVED  
JAN 27 2003  
CITY OF MILPITAS  
ENGINEERING DIVISION

Dear Mr. Scott:

**WATER SUPPLY EVALUATION**

**Spring Valley Heights Mutual Water Company, System No. 4300856**

This letter is to provide a water supply evaluation of the Spring Valley Heights Mutual Water Company as required by Section 64562(a), Chapter 16, *California Waterworks Standards*, Title 22, California Code of Regulations. Section 64562(a) states, "Sufficient water shall be available from the water sources and distribution reservoirs to supply adequately, dependably and safely the total requirements of all users under maximum demand conditions before agreement is made to permit additional service connections to a system."

The Department of Health Services (Department) was notified by the City of Milpitas that Spring Valley Heights Mutual Water Company (SVHMWC) had experienced a water supply shortage last year requiring SVHMWC to formally request a temporary emergency water supply from the City. The City approved a resolution that allowed SVHMWC to truck water to its system for a period of 6 months. SVHMWC has not been able to remedy its water supply problem during this period and has asked the City for an extension of the resolution.

On October 31, 2002, our Department issued a letter to SVHMWC requesting all information related to water supply and water usage. The information request included pump test data for the well, design calculations for the distribution system, and customer usage records. On November 27, 2002, SVHMWC provided by electronic mail only data related to monthly water system usage. It was not indicated how the water usage information was collected. No water production information has been provided. Due to the limited information and data provided, the Department cannot make an accurate determination of SVHMWC's ability to reliably and dependably serve all of its users.



Do your part to help California save energy. To learn more about saving energy, visit the following web site:  
[www.consumerenergycenter.org/flex/index.html](http://www.consumerenergycenter.org/flex/index.html)

Drinking Water Field Operations Branch, 2151 Berkeley Way, Room 458, Berkeley, CA 94704-1011  
(510) 540-2158 FAX (510) 540-2152

DHS Internet Address: [www.dhs.ca.gov](http://www.dhs.ca.gov) Program Internet Address: [www.dhs.ca.gov/ps/ddwem](http://www.dhs.ca.gov/ps/ddwem)

Anecdotal information provided during phone conversations suggests that Well No. 3 is currently producing 30-35 gallons per minute (gpm). This information was developed indirectly by observing the fill rate of the storage tank while the well pump is in operation. It does not necessarily take into account system demand at the time of the observation. Nor does it demonstrate a steady, constant supply of water for a sustained period of time. Because the well is throttled to prevent excessive drawdown, well run times are relatively short to allow recharge, and due to the anecdotal data collection methods for well production, the Department assigns a well capacity of 25% of the reported production rate. Therefore, the Department assigns a well capacity value of 8 gpm.

Monthly water usage data collected from August 2001 through September 2002 indicates a peak monthly usage rate of 433,410 gallons in July 2002. This is equivalent to a system-wide daily demand of 13,981 gallons. Using a daily peaking factor of 1.5, it can be estimated that the maximum daily demand is 20,972 gallons (or 14.6 gpm).

Based on our assessment of available information, the system supply needs under maximum demand conditions is approximately 15 gpm while the sustained yield of SVHMWC's well is 8 gpm. As a result, the Department finds that SVHMWC cannot reliably and consistently produce sufficient water to meet its system demand.

SVHMWC is instructed to comply with the following until the new well is approved and brought on line:

- Discontinue issuing "will serve" letters to any owners of undeveloped lots within the Spring Valley Heights subdivision.
- Continue to notify all customers of SVHMWC on a quarterly basis of the ongoing water supply problem and emphasize the importance of water conservation, especially during the high use time periods of summer and early fall.
- Pursue returning to compliance with the requirements found in the waterworks standards as soon as possible by developing a new source (or sources) of water supply.

SVHMWC must apply for a permit and be approved by the Department prior to operating the new well (Well 4). Our letter, dated January 15, 2002, outlines all of the documentation necessary to get approval to use the well. The documents include: a permit application, a check made out to *Department of Health Services, Drinking Water Program* for \$258.00 to process the application, a completed Environmental Information Form, engineering plans and specifications of the well construction, a source site plan, a completed source water assessment, Title 22 water quality analytical reports, drillers report, well log, and well pump test. Based on our records, we have not received any of this information from SVHMWC to date. Please note that the Department can take 30 days to determine if the application is complete and accepted for filing and an additional 90 days to complete the permit. It is in SVHMWC's best interest to make this a top

Mr. Bob Scott  
January 24, 2003  
Page 3

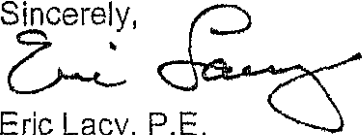
priority and put this documentation together for submittal to our office as soon as possible to prevent the delay of using the well.

In addition, the well pump test must follow the following steps:

1. Pump the well continuously for 72 hours using a constant rate of water discharge;
2. Take measurements of water drawdown and pumping rate every 4 hours;
3. Pump until the water drawdown level is constant for at least 4 measurements;
4. Plot the drawdown measurements against the logarithm of time elapsed since the beginning of the pump test, which should produce a straight line.

If you have any questions regarding this matter, please contact me at (510) 540-2413.

Sincerely,



Eric Lacy, P.E.  
District Engineer  
Santa Clara District  
Drinking Water Field Operations Branch

cc: Santa Clara County Environmental Health Department

**Ms. Marilyn Nickel**

Associate Civil Engineer  
City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

ATTACHMENT 3

# TODD ENGINEERS

GROUNDWATER • WATER RESOURCES • HYDROGEOLOGY • ENVIRONMENTAL ENGINEERING

## MEMORANDUM BY FAX

**Date:** September 3, 2003

**To:** Darryl Wong, Principal Civil Engineer  
Utility Engineering Department  
City of Milpitas

**Fax#** 408-586-3305

**From:** Raymond K. Will *RKWill*  
Registered Civil Engineer #26005

**Subject:** Emergency Water Supply, Spring Valley Heights Mutual Water Company  
UPDATED

This letter is to provide my opinion with regard to the continuing emergency water shortage described in the Emergency Water Request, dated September 24, 2002, in addition to the most recent request of September 2, 2003, from the Spring Valley Heights Homeowners Association and Mutual Water Company (SVH) prepared pursuant to the provisions of Resolution 6796 of the City of Milpitas (City) General Plan Amendment, Section 2A (ii) "Urgent Public Health or Safety Concern Affecting Existing Development".

Todd Engineers was retained to provide a professional opinion concerning the provision cited above and submitted a technical memorandum to the City on September 26, 2002 stating the following opinion:

"It is my professional opinion that the only economically justifiable solution to this public health concern is to obtain City water."

A second letter from Todd Engineers was submitted January 8, 2003, confirming the continuing water shortage.

My conclusion was based on review of the following: 1) site conditions observed during site inspection of the four water wells, water storage tank, and water distribution pipeline system; 2) site topographic and geologic maps prepared by the U.S. Geological Survey, 3) plan maps of the lots, and roads of the subdivision, 4) geophysical electric log of the test Well #4, 5) groundwater chemistry collected from the wells, and 6) telephone discussions with City planning and engineering department staff.



The emergency purchase and truck transport of City water although of relatively higher cost (2.5 to 3.0 cent/gallon) that water from the SVH Mutual Water Company system, is necessary because production Well #3 does not have sufficient capability to meet current domestic and fire protection needs. This is a result of local drought conditions and declining groundwater table.

The cost of trucking water from an alternative source (San Jose Water Company) was considered but was 12.5 cents/gallon, much greater than the cost of City water and would cost over \$40,000 per month.

After a very aggressive rehabilitation program and testing, the new production Well #4 has been unsuccessful and the water is of unacceptable quality. Historically, each of the previous 3 production wells initial capacity was sufficient but declined within 3 or 4 years to an insufficient volume for a permanent water supply.

Discussions with Bob Scott indicate that although the SVH Mutual Water Company has had some success with reducing yields from Well #3 to maintain some flow, (8 to 10 gallons per minute) and water conservation efforts by residents, the district has been required to purchase water, transported by truck, to maintain a sufficient water supply to residents.

In summary the technical evaluation has included examination of the 1) site topographic setting, structural geology and mineralization, 2) well drilling logs and geophysical logs of the boring, 3) groundwater quality from laboratory analysis, 4) hydrologic parameters and historic production records from the existing 4 water wells. 5) costs of supplying water by trucking.

Based on the above evaluation, my conclusion is that no reasonable cost effective solution appears to be available except construction of a permanent pipeline to connect SVH with the City of Milpitas municipal water distribution system.



Co: Bob Scott - SVH Fax#408-934-1886

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY OF MILPITAS REQUESTING APPROVAL OF A WATER SERVICE AGREEMENT WITH SPRING VALLEY HEIGHTS HOMEOWNERS ASSOCIATION BY THE SANTA CLARA COUNTY LOCAL AGENCY FORMATION COMMISSION**

WHEREAS, The Spring Valley Heights Mutual Water Company (SPVH-MWC) provides drinking water to the Spring Valley Heights subdivision, which is located primarily within the City of Milpitas but outside the City-established Urban Growth Boundary; and

WHEREAS, SPVH-MWC is experiencing a water supply shortage due to diminished well capacities that has critically impaired the system's ability to provide sufficient supply to meet the community's sanitary and fire safety needs; and

WHEREAS, SPVH-MWC requested temporary emergency water supply from the City of Milpitas; and

WHEREAS, SPVH-MWC has submitted a statement from an independent licensed professional engineer that an emergency due to water shortage exists and connection to City water is the only economically justifiable solution; and

WHEREAS, the voters of the City of Milpitas by approving Ordinance No. 38-742 enacted an Urban Growth Boundary in 1998, which generally restricts the provision of City services outside of the Urban Growth Boundary; and

WHEREAS, the City Council of Milpitas has previously determined that emergency water supply is needed, and has granted emergency water supply from the City water system; and

WHEREAS, Spring Valley Heights Homeowners Association (Association) has requested permanent connection to the City's water system for which City needs approval from the Santa Clara County Local Agency Formation Commission (LAFCO) as one of the homes is located in the county.

WHEREAS, the Association is willing to assume private water distribution system duties and disband the SPVH-MWC upon approval by San Francisco Public Utility Commission (SFPUC) in order to meet Raker Act requirements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILPITAS THAT:

1. The City Council hereby finds that:
  - (a) The lack of a potable water supply source constitutes an immediate health and safety concern.
  - (b) The property to which service is being requested is currently developed.
  - (c) There are physical restrictions to the property that prohibit a conventional service delivery method typically suited to unincorporated area.

- (d) An agreement with Association as shown in Attachment A can be considered for adoption contingent upon approval of SFPUC water supply to the Spring Valley Heights community by SFPUC.

2. Staff is hereby authorized to submit the following documents to LAFCO:

- (a) Council Resolution requesting LAFCO administrative approval.
- (b) Letter from State Department of Health Services stating that a health and safety concern exists.
- (c) The terms of the agreement with Association contingent upon approval of service by SFPUC.

3. The City Council hereby requests that LAFCO Executive Officer and ChairPerson grant administrative approval in support of this request.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Gail Blalock, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven T. Mattas, City Attorney

**Control No.** \_\_\_\_\_

Recording requested by:

**City of Milpitas**

When recorded mail to:

**City of Milpitas**

**City Engineer's Office**

**455 E. Calaveras Blvd.**

**Milpitas, CA 95035**

**AGREEMENT FOR THE PROVISION OF CITY POTABLE WATER SERVICE  
(INCLUDING PROPERTY LOCATED OUTSIDE THE CITY LIMITS)**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Milpitas, a municipal corporation, hereinafter referred to as "CITY," and Spring Valley Heights Homeowners Association, hereinafter referred to as "ASSOCIATION."

WHEREAS, ASSOCIATION is a homeowners' association made up of the owners of the 25 lots in the Spring Valley Heights subdivision, which owners are referred to herein as "the Members."

WHEREAS, the 25 lots of the Spring Valley Heights Subdivision plus one additional lot together make up the Spring Valley Heights Community (Community).

WHEREAS, the existing private water system that serves the Spring Valley Heights Community is operated by the Spring Valley Heights Mutual Water Company ("the Company").

WHEREAS, one lot in the Community is outside the Milpitas city limits, and therefore Local Agency Formation Commission ("LAFCO") approval is required in order for the City to provide service outside of its boundaries; and

WHEREAS, the Company's existing groundwater supply has diminished and is now inadequate to provide for health and safety needs of the ASSOCIATION; and

WHEREAS, the Company is receiving temporary emergency water supply from the CITY'S municipal water supply for the Spring Valley Heights Subdivision; and

WHEREAS, the State of California Department of Health Services has evaluated the Company's existing groundwater supply and instructed the Company to develop a new water source or supply; and

WHEREAS, the Company developed a new well and determined that it was of inadequate quantity and quality for potable water purposes; and

WHEREAS, ASSOCIATION desires a permanent connection to the CITY'S municipal water supply to serve the Community; and

WHEREAS, CITY finds that adequate utility capacity exists to provide such service within its San Francisco Public Utility Commission water supply service area; and

WHEREAS, the San Francisco Public Utility Commission has approved use of this water contingent upon ASSOCIATION, rather than the Company, supplying water to the lots within the Spring Valley Heights subdivision in order to comply with the provisions in the Raker Act, which prohibit supplying water to private companies for resale; and

WHEREAS, ASSOCIATION is willing to design and construct a permanent water connection to the CITY'S municipal water supply in accordance with CITY standards at its own cost and to provide retail water service to the Members through a master meter.

NOW, THEREFORE, in consideration of the promises herein and for further good and valuable consideration hereinafter set forth, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

SECTION 1. Subject Property. The properties to be served by water supplied to the ASSOCIATION by the City shall be solely those properties described on Exhibit A which is attached hereto and incorporated herein by this reference. The term "Member" as used herein shall refer to the owners of the property described in Exhibit A.

SECTION 2. Conditions for Receipt of Water Service. ASSOCIATION may provide potable water service to the properties described in Exhibit A provided that ASSOCIATION and its members shall comply with all laws, codes, ordinances and policies relating to potable water service within the City of Milpitas ("the Rules"). Upon request by CITY, ASSOCIATION agrees to disconnect or otherwise discontinue providing water service to a Member for the Member's failure to comply with the Rules.

SECTION 3. Construction of Necessary Facilities. ASSOCIATION shall prepare plans and specifications for installation of an extension of the City's existing potable water system that terminates at a master water meter ("the Master Meter") through which water will be provided to the Members, which plans shall be subject to approval of the City. The Water System Extension may include piping, pumps, pump stations, controls, emergency generators, programmable logic controller, and other necessary appurtenances. ASSOCIATION shall install potable water mains in the public street, in an existing public service easement or in an approved easement from ASSOCIATION's property to the public potable water system connection point, all subject to approval by the City and in accordance with the then-existing CITY standards.

SECTION 4. Costs. The ASSOCIATION shall pay the following costs as set forth below:

A. The ASSOCIATION shall pay all costs to the City associated with the Water System Extension. These costs shall include the City's costs incurred in project coordination, plan check, inspection, and acceptance associated with the Water System Extension. The amount of such costs shall be based upon standard City of Milpitas labor and material rates paid to the City pursuant to City Private job (PJ) cost reimbursement process. The ASSOCIATION has provided a deposit in the amount of \$5,000 on August 1, 2003. If said costs exceed the amount of the deposit, as determined by the City, ASSOCIATION agrees to immediately replenish the deposit in the amount requested by the City Engineer. If the costs do not exceed the amount of the deposit, the City shall refund the remaining deposit amount to the ASSOCIATION.

B. The ASSOCIATION shall pay the City's costs for processing the Out of Agency Request to Santa Clara County Local Agency Formation Commission ("LAFCO") approval. The ASSOCIATION shall in addition pay all LAFCO application and processing fees. These costs may be deducted from the PJ account balance.

C. Upon completion of the physical connection of the public potable water system to the Master Meter and prior to the commencement of water service, the ASSOCIATION shall make a lump-sum payment equal to the City's then-current water connection fee for each structure connecting to the system. Upon the proposed connection of additional structures to the system and prior to the issuance of building permits for said structures, the individual property owners shall pay a fee equal to the amount of the then-current connection fee. The

ASSOCIATION acknowledges that the City may withhold issuance of building permits if such connection fees are not paid.

D. The ASSOCIATION shall pay the City's costs of operating and maintaining the Water System Extension (including any necessary pump stations) and Master Meter including labor, pipeline and equipment replacement, and routine material consumed during operation of the system. The City shall determine the costs of operating and maintaining the Water System Extension and provide an invoice for such costs each year by January 31. The ASSOCIATION shall pay the invoice within 30 days of the date of the invoice. The City will consider alternate means, such as the formation of an assessment district, to assist the ASSOCIATION in financing the construction, operation, and maintenance of the Water System Extension.

E. The ASSOCIATION shall pay to the City water meter and water quantity charges on the City's standard billing cycle based on the water supplied to the Master Meter and as required by the City's then-current water rates, whether adopted by ordinance, resolution, or otherwise.

F. In addition, the ASSOCIATION shall, on request by CITY, reimburse CITY for any other reasonable costs that are a direct or indirect result of the Water System Extension to the extent such costs are not otherwise covered herein.

Unless otherwise set forth herein, all fees and charges described above will be due and payable at the time said fees are usually and customarily collected by CITY under its rules and regulations respecting such fees and charges.

SECTION 5. ASSOCIATION shall be responsible for all acquisition of any necessary right-of-way for the Water System Extension, prepare necessary environmental documents, and construct the Water System Extension in accordance with all laws, codes, ordinances and policies of CITY in effect at the time of construction. The ASSOCIATION shall cause the designer of the Water System Extension to develop and provide to the City prior to the City's acceptance an operation and maintenance manual.

SECTION 6. ASSOCIATION shall dedicate all newly constructed public potable water supply facilities (up to the Master Meter) to CITY, in consideration of permission to connect to City's systems.

SECTION 7. It is understood and agreed that CITY will own and maintain all public potable water facilities (up to the Master Meter) installed by ASSOCIATION that have been inspected and approved by CITY after the system is dedicated to the CITY.

SECTION 8. Further, CITY shall not be liable in any way for damages to ASSOCIATION or ASSOCIATION's property resulting from acts of God or any other act or acts beyond the control of CITY which may in any way cause interruption or discontinuance of the potable water service(s) provided hereunder.

SECTION 9. ASSOCIATION expressly agrees that all maintenance of the potable water distribution system after the Master Meter shall be the responsibility of ASSOCIATION and the Members. ASSOCIATION shall keep the potable water distribution system under its ownership in good condition and shall promptly repair the same following damage or disrepair in accordance with applicable laws, codes, ordinances, and policies.

SECTION 10. Upon ASSOCIATION's breach of or failure to timely perform any of the terms of this Agreement, this Agreement may be terminated at CITY's sole option, and CITY may discontinue service.

SECTION 11. ASSOCIATION further agrees that its on-site distribution system shall only serve the parcels described in Exhibit "A," and does not extend to any additional subdivision of said property.

SECTION 12. CITY may allow extensions or connections onto this Water System Extension to serve third parties. ASSOCIATION is entitled to apply for reimbursement for capital construction costs in accordance with Milpitas Municipal Code Title VIII, Chapter 1.

SECTION 13. This Agreement shall be binding upon the successors, heirs, or assigns of ASSOCIATION.

SECTION 14. The parties agree that this Agreement for Potable Water Services shall be recorded in the office of the County Recorder of Santa Clara County, California, at ASSOCIATION's cost and expense, and that the provisions contained herein relative to the real property described in Exhibit "A" shall operate as covenants and restrictions thereon.

SECTION 15. This Agreement shall become null and void and without any further force or effect if the extension of services described hereunder are not approved by LAFCO on or before December 31, 2003, unless extended by written mutual agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective the day and year first above written.

CITY OF MILPITAS, a municipal corporation      ASSOCIATION:

\_\_\_\_\_  
Jose S. Esteves, Mayor

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Dated: \_\_\_\_\_, 20\_\_

ATTEST:

\_\_\_\_\_  
Gail Blalock, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Steve Mattas, City Attorney

## Exhibit A Properties governed by this Agreement

APN 42-30-026	3547 Vista Norte Court
APN 42-30-027	2553 Vista Norte Court
APN 42-30-028	3561 Vista Norte Court
APN 42-30-004	3545 Vista Norte Court
APN 42-30-005	3550 Vista Norte Court
APN 42-30-025	350 Vista Ridge Drive
APN 42-30-006	375 Vista Ridge Drive
APN 42-30-029	531 Vista Ridge Drive
APN 42-30-015	529 Vista Ridge Drive
APN 42-30-14	527 Vista Ridge Drive
APN 42-30-013	525 Vista Ridge Drive
APN 42-30-012	523 Vista Ridge Drive
APN 42-30-008	489 Vista Ridge Drive
APN 42-30-011	521 Vista Ridge Drive
APN 42-30-010	519 Vista Ridge Drive
APN 42-30-009	517 Vista Ridge Drive
APN 42-30-007	461 Vista Ridge Drive
APN 42-30-017	510 Vista Spring Court
APN 42-30-018	514 Vista Spring Court
APN 42-30-019	518 Vista Spring Court
APN 42-30-021	500 Vista Spring Court
APN 42-30-024	410 Vista Ridge Drive
APN 42-30-022	490 Vista Ridge Drive
APN 42-30-023	422 Vista Ridge Drive
APN 42-30-020	524 Vista Ridge Drive
APN 42-31-002	548 Vista Ridge Drive and 550 Vista Ridge Drive (COUNTY PARCEL)